

**§ 1705.12 Documentation of fees and expenses.**

(a) The application for award shall be accompanied by full and itemized documentation of the fees and other expenses for which an award is sought. The adjudicative officer may require the applicant to provide vouchers, receipts, logs, or other documentation for any fees or expenses claimed.

(b) A separate itemized statement shall be submitted for each entity or individual whose services are covered by the application. Each itemized statement shall include:

(1) The hours spent by each entity or individual;

(2) A description of the specific services performed and the rates at which each fee has been computed; and

(3) Any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by any other person or entity.

**§§ 1705.13–1705.19 [Reserved]****Subpart C—Procedures for Filing and Consideration of the Application for Award****§ 1705.20 Filing and service of the application for award and related papers.**

(a) An application for an award of fees and other expenses must be filed no later than 30 days after the final disposition of the underlying adversary adjudication.

(b) An application for award and other papers related to the proceedings on the application for award shall be filed and served on all parties in the same manner as papers are filed and served in the underlying adversary adjudication, except as otherwise provided in this part.

(c) The computation of time for filing and service of the application of award and other papers shall be computed in the same manner as in the underlying adversary adjudication.

**§ 1705.21 Answer to the application for award.**

(a) Agency counsel shall file an answer within 30 days after service of an application for award of fees and other

expenses except as provided in paragraphs (b) and (c) of this section. In the answer, agency counsel shall explain any objections to the award requested and identify the facts relied upon to support the objections. If any of the alleged facts are not already in the record of the underlying adversary adjudication, agency counsel shall include with the answer either supporting affidavits or a request for further proceedings under § 1705.25.

(b) If agency counsel and the applicant believe that the issues in the application for award can be settled, they may jointly file a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer for an additional 30 days. Upon request by agency counsel and the applicant, the adjudicative officer may grant for good cause further time extensions.

(c) Agency counsel may request that the adjudicative officer extend the time period for filing an answer. If agency counsel does not answer or otherwise does not contest or settle the application for award within the 30-day period or the extended time period, the adjudicative officer may make an award of fees and other expenses upon a satisfactory showing of entitlement by the applicant.

[65 FR 26732, May 9, 2000. Redesignated and amended at 65 FR 81328, Dec. 26, 2000]

**§ 1705.22 Reply to the answer.**

Within 15 days after service of an answer, the applicant may file a reply. If the reply is based on any alleged facts not already in the record of the underlying adversary adjudication, the applicant shall include with the reply either supporting affidavits or a request for further proceedings under § 1705.25.

[65 FR 26732, May 9, 2000. Redesignated and amended at 65 FR 81328, Dec. 26, 2000]

**§ 1705.23 Comments by other parties.**

Any party to the underlying adversary adjudication other than the applicant and agency counsel may file comments on an application for award within 30 calendar days after it is

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served, or on an answer within 15 calendar days after it is served. A commenting party may not participate further in proceedings on the application unless the adjudicative officer determines that the public interest requires such participation in order to permit full exploration of matters raised in the comments.

#### § 1705.24 Settlement.

The applicant and agency counsel may agree on a proposed settlement of an award before the final decision on the application for award is made, either in connection with a settlement of the underlying adversary adjudication or after the underlying adversary adjudication has been concluded. If the eligible party and agency counsel agree on a proposed settlement of an award before an application for award has been filed, the application shall be filed with the proposed settlement.

#### § 1705.25 Further proceedings on the application for award.

(a) On request of either the applicant or agency counsel, on the adjudicative officer's own initiative, or as requested by the Director of OFHEO under § 1705.27, the adjudicative officer may order further proceedings, such as an informal conference, oral argument, additional written submissions, or, as to issues other than substantial justification (such as the applicant's eligibility or substantiation of fees and expenses), pertinent discovery or an evidential hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application for award and shall be conducted as promptly as possible. The issue as to whether the position of OFHEO in the underlying adversary adjudication was substantially justified shall be determined on the basis of the whole administrative record that was made in the underlying adversary adjudication.

(b) A request that the adjudicative officer order further proceedings under this section shall specifically identify the information sought on the disputed issues and shall explain why the addi-

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tional proceedings are necessary to resolve the issues.

[65 FR 26732, May 9, 2000. Redesignated and amended at 65 FR 81328, Dec. 26, 2000]

#### § 1705.26 Decision of the adjudicative officer.

(a) The adjudicative officer shall make the initial decision on the basis of the written record, except if further proceedings are ordered under § 1705.25.

(b) The adjudicative officer shall issue a written initial decision on the application for award within 30 days after completion of proceedings on the application. The initial decision shall become the final decision of OFHEO after 30 days from the day it was issued, unless review is ordered under § 1705.27.

(c) In all initial decisions, the adjudicative officer shall include findings and conclusions with respect to the applicant's eligibility and an explanation of the reasons for any difference between the amount requested by the applicant and the amount awarded. If the applicant has sought an award against more than one agency, the adjudicative officer shall also include findings and conclusions with respect to the allocation of payment of any award made.

(d) In initial decisions on applications filed pursuant to § 1705.4(a), the adjudicative officer shall include findings and conclusions as to whether OFHEO made a demand that was substantially in excess of the decision in the underlying adversary adjudication and that was unreasonable when compared with that decision; and, if at issue, whether the applicant has committed a willful violation of the law or otherwise acted in bad faith, or whether special circumstances would make the award unjust.

(e) In decisions on applications filed pursuant to § 1705.4(b), the adjudicative officer shall include written findings and conclusions as to whether the applicant is a prevailing party and whether the position of OFHEO was substantially justified; and, if at issue, whether the applicant unduly protracted or delayed the underlying adversary adjudication or whether special circumstance make the award unjust.

[65 FR 26732, May 9, 2000. Redesignated and amended at 65 FR 81328, Dec. 26, 2000]